



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Roger's Binding and Mailing

File: B-236176

Date: July 25, 1989

DIGEST

General Accounting Office (GAO) will not consider a protest questioning a prospective awardee's low price or its ability to comply with specifications in an invitation for bids since such a protest is a challenge to the contracting officer's affirmative determination that the firm is a responsible contractor, and GAO will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied.

DECISION

Roger's Binding and Mailing protests the prospective award to KPT, Inc., of a contract for forms and labels for the 1990 United States census under invitation for bids (IFB) No. 235-592, issued by the Government Printing Office. Roger's contends that KPT, which was the low bidder, lacks the ability to comply with one of the bid specifications and that KPT's price is so unrealistically low as to evidence a significant mistake in its cost calculations. We dismiss the protest without requiring the submission of an agency report. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

The protester argues first that KPT lacks an existing "Manifest Mailing System" as required to comply with the IFB specifications. The protester, however, has not alleged that KPT took exception to any of the IFB's requirements; thus, by submitting a bid, KPT has obligated itself to perform in accordance with the terms of the IFB. Whether KPT will be able to perform as required is a matter of its responsibility. Electronic Sys. USA, Inc., B-233104, Dec. 28, 1988, 88-2 CPD ¶ 631.

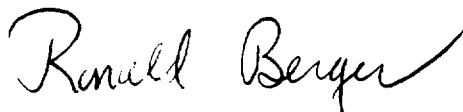
0-46072/139187

It is not clear from the protester's submission whether the contracting officer has at this point made a determination with regard to KPT's responsibility. In the event that he has not, Roger's protest against an award to KPT is premature since the contracting officer must make an affirmative determination of contractor responsibility prior to award. Federal Acquisition Regulation (FAR) § 9.103(b). Furthermore, if the contracting officer has determined that KPT is responsible, we will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied, neither of which is alleged here. 4 C.F.R. § 21.3(m)(5) (1988); Keal Cases, Inc., B-233370, Jan. 12, 1989, 89-1 CPD ¶ 34.

The protester argues secondly that KPT's bid price is so unrealistically low that it must be mistaken.

Again, it is not clear whether the contracting officer has yet made a determination with regard to KPT's price. If the price submitted by KPT appears to him so unreasonably low as to suggest error, the contracting officer must seek appropriate verification prior to making an award. FAR § 14.406-1. In the event that the contracting officer determines that KPT's price is its intended price and that KPT can adequately perform the contract at that price, we will not review the matter since it also concerns the agency's affirmative responsibility determination, a matter which, as noted above, we will review only in limited circumstances not alleged or evident here. 4. C.F.R. § 21.3(m)(5); Applied Controls Co., Inc.--Request for Reconsideration, B-228568.2, Nov. 30, 1987, 87-2 CPD ¶ 528.

The protest is dismissed.



Ronald Berger
Associate General Counsel